Office - Supreme Court, U.S.
FILED
FEB 23 1984
ALEXANDER L. STEVAS
CLERK

No. 83-886

In the Supreme Court of the United States

OCTOBER TERM, 1983

STATE BOARD OF EQUALIZATION OF GEORGIA, ET AL., PETITIONERS

v.

SOUTHERN RAILWAY COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Page

Cases:

Alabama Public Service Comm'n v. *Southern Ry.*, 341 U.S. 341 ..... 6, 7

Burford v. *Sun Oil Co.*, 319 U.S. 315 ..... 1, 2, 6

California v. *Grace Brethren Church*, 457 U.S. 393 4

Fair Assessment in Real Estate Ass'n v. *McNary*, 454 U.S. 100 ..... 4, 6

Moe v. *Salish & Kootenai Tribes*, 425 U.S. 463 4

Patsy v. *Florida Board of Regents*, 457 U.S. 496 5

Rosewell v. *LaSalle National Bank*, 450 U.S. 503 4

Constitution and statutes:

U.S. Const. Amend. X 2

Johnson Act, 28 U.S.C. 1342 6

Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, § 306, 90 Stat. 54, 49 U.S.C. (Supp. V) 11503 ..... 2, 3, 4, 5, 6, 7

Tax Injunction Act, 28 U.S.C. 1341 2

28 U.S.C. 2403(a) 2

42 U.S.C. (Supp. V) 1983 6

Page

Miscellaneous:

S. Conf. Rep. 94-595, 94th Cong., 2d Sess. (1976) 3

S. Rep. 1483, 90th Cong., 2d Sess. (1968) 3

In the Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-886

STATE BOARD OF EQUALIZATION OF GEORGIA, ET AL., PETITIONERS

v.

SOUTHERN RAILWAY COMPANY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that a district court is free to exercise its equitable discretion to abstain under *Burford* v. *Sun Oil Co.*, 319 U.S. 315 (1943), even though Congress has specifically determined that a federal forum should be available to enforce a federal statutory right.

1. Respondent railroads brought this action in the United States District Court for the Northern District of Georgia to enjoin the assessment of their property for the 1979 tax year by petitioners, the State Board of Equalization of Georgia and its members. Relying on a sales ratio study prepared by the Georgia Department of Audits, the railroads alleged that the ratio of assessed value to true market value of their property exceeded by at least five percent the ratio of assessed value to true market value of other commercial and industrial property in Georgia, in violation

of Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), Pub. L. No. 94-210, 90 Stat. 54, 49 U.S.C. (Supp. V) 11503 (Section 11503) (Pet. App. 36a-39a). Section 11503 prohibits the discriminatory taxation of railroad property by states and establishes federal jurisdiction in the district courts to enjoin violations notwithstanding the Tax Injunction Act, 28 U.S.C. 1341. The United States intervened pursuant to 28 U.S.C. 2403(a) because petitioners raised as a defense that Section 11503 usurps powers reserved to the states and thus violates the Tenth Amendment. Pet. App. 2a-3a.

Without ruling on the constitutionality of Section 11503 or reaching the merits of the railroads' complaint, the district court "exercise[d] * * * its discretion * * * [to] abstain" (Pet. App. 33a) under *Burford* v. *Sun Oil Co., supra*. The court concluded that the issue raised by the railroads "is clearly seen as one more properly considered by the state courts rather than the federal courts" (Pet. App. 26a). Accordingly, it dismissed the action.

On appeal by the railroads and the United States, the court of appeals reversed. It found that "Congress meant unconditionally to ensure a federal forum for section 11503 claims" (Pet. App. 9a). As the court of appeals noted, Congress, after "thoroughly consider[ing] the effects the Act would have on state taxation policies and practices * * *[,] concluded that both a federal remedy and a federal forum were necessary to further the strong national policy of protecting interstate commerce from the disruptive effects of discriminatory state and local taxation of railroad property" (*id.* at 13a-14a). And, to assure the availability of a federal forum, "Congress provided in section 11503 a specific exemption to the Tax Injunction Act," which would otherwise bar federal court suits to enjoin state taxes (Pet. App. 12a). Because "[a]bstention here * * * would rob the jurisdictional grant of section 11503 of all meaning" (*id.* at

15a), the court of appeals held that the district court had abused its discretion in abstaining, and it remanded the case for consideration on the merits (*id.* at 17a).

2. The court of appeals correctly construed Section 11503 to ensure that federal district courts would be available for suits by railroads to enjoin discriminatory state taxation. Moreover, as petitioners acknowledge (Pet. 14, 15, 17), no conflict exists on the construction of Section 11503. See also Southern Ry. Br. in Opp. 8-9. Accordingly, further review is not warranted.

a. The court of appeals carefully reviewed the extensive legislative history of Section 11503 (Pet. App. 12a-15a). Based on that review, the court correctly concluded that Congress, while aware of "the effects the Act would have on state taxation policies and practices" (*id.* at 13a), determined that "strong federal policies demanded a federal forum as well as a federal substantive remedy" (*id.* at 12a) and therefore "meant to guarantee a federal forum for railroad suits" (*id.* at 14a). See, *e.g.*, S. Rep. 1483, 90th Cong., 2d Sess. 6-7 (1968). Petitioners have pointed (Pet. 15-17) to nothing in the text or history of the Act that contradicts the court of appeals' conclusion. Nor is there any merit to their suggestion (Pet. 16-17) that Section 11503 is limited to cases involving de jure discrimination against railroads or ineffective and unreasonable state remedies. See Pet. App. 9a, 12a-13a; S. Conf. Rep. 94-595, 94th Cong., 2d Sess. 166 (1976).

Moreover, to guarantee the necessary federal forum, Congress specifically provided in Section 11503 for district court jurisdiction "[n]otwithstanding any provision of [the Tax Injunction Act] or of the constitution or laws of any State" (Pet. App. 37a). Because the Tax Injunction Act and equitable abstention in the state tax area reflect similar concerns of comity and federalism (see *California* v. *Grace*

Brethren Church, 457 U.S. 393, 408-409, 411, 413 n.29, 417 (1982); *Fair Assessment in Real Estate Ass'n* v. *McNary*, 454 U.S. 100, 103, 105, 110, 116 n.8 (1981); *Rosewell* v. *LaSalle National Bank*, 450 U.S. 503, 522 (1981); *Moe* v. *Salish & Kootenai Tribes*, 425 U.S. 463, 470 (1976)), we perceive no reason, and petitioners have cited none, why Congress would have enacted an exception to the Tax Injunction Act in Section 11503 and yet intended to allow district judges to render a federal forum unavailable under the parallel doctrine of abstention. As the court of appeals correctly recognized, abstention "would rob the jurisdictional grant of section 11503 of all meaning" (Pet. App. 15a) and would interfere with "accomplish[ment of the congressional] purpose * * * to guarantee a federal forum for railroad suits" (*id.* at 14a). Since Congress has already struck the balance between federal and state interests here, there is no room for a district court to reweigh the same factors and reach a contrary conclusion under the rubric of equitable abstention.[1]

b. Petitioners contend (Pet. 7, 9 n.3, 10, 13, 14), however, that federal courts should be free to exercise their discretion to abstain even though Congress has required that a federal forum be available to adjudicate federal statutory rights. In their view, "comity and federalism are always to be considered in *Burford* abstention cases, irrespective of whether the statutory indications favor or disfavor abstention" (Pet. 10). We are aware of no support for this broad assertion, and the court of appeals correctly rejected it (Pet. App. 14a, 16a n.14). In Section 11503, Congress has affirmatively

---

[1] This conclusion is reinforced by petitioners' emphasis (Pet. 16-17) on the adequacy of the railroads' remedy under state law. In effect, petitioners seek to impose, under principles of equitable abstention, the "plain, speedy and efficient" standard of the Tax Injunction Act — a standard that Congress specifically provided would not be applicable in Section 11503 suits.

determined that, as a matter of national policy, a federal forum must be available for suits by railroads to enforce their statutory protection against discriminatory state taxes. The Court's analysis of the exhaustion issue in *Patsy* v. *Florida Board of Regents*, 457 U.S. 496, 501-502, 513 (1982) (footnote omitted), is equally pertinent here:

> Congress is vested with the power to prescribe the basic procedural scheme under which claims may be heard in federal courts. Of course, courts play an important role in determining the limits of an exhaustion requirement and may impose such a requirement even where Congress has not expressly so provided. However, the initial question whether exhaustion is required should be answered by reference to congressional intent; and a court should not defer the exercise of jurisdiction under a federal statute unless it is consistent with that intent.
>
> * * * * *
>
> [P]olicy considerations alone cannot justify judicially imposed exhaustion unless exhaustion is consistent with congressional intent.

Thus, district courts are not free to disregard Congress's affirmative determination that the availability of a federal forum is necessary to further national policy.

Contrary to petitioners' characterization (Pet. 8), the court of appeals did not hold that "if Congress intended to offer a suitor a choice of forum then a district court may not decline to exercise its jurisdiction." Indeed, the court below expressly stated that a federal court "is not bound to * * * hear any case for which Congress has provided jurisdiction" (Pet. App. 11a n.12), and it discussed a number of decisions that recognize a court's discretion to abstain from exercising jurisdiction (*id.* at 10a-11a). The court's holding is confined to Section 11503, in which Congress specifically

determined that railroads should have access to a federal forum to enjoin discriminatory state taxation notwithstanding any impact on state tax policies and practices (see Pet. App. 12a, 13a).

c. Petitioners acknowledge (Pet. 10) that this consideration — Congress's affirmative intention in Section 11503 to make available a federal forum for enforcing a federal statutory right regardless of the effect federal adjudication might have on the state tax system — distinguishes this case from *Burford* v. *Sun Oil Co., supra,* and *Fair Assessment in Real Estate Ass'n* v. *McNary, supra,* upon which they rely.[2] They contend, however, that the decision below "conflicts in principle" (Pet. 10) with *Alabama Public Service Comm'n* v. *Southern Ry.*, 341 U.S. 341 (1951). This contention is without merit. In that case, the Court rejected the argument that the inapplicability of the Johnson Act (28 U.S.C. 1342), which prohibits federal suits to enjoin state rate orders for public utilities, established by negative implication a congressional mandate that district courts should adjudicate the validity of other state public utility orders. Here, in contrast, it is clear that Congress has affirmatively and specifically concluded that a federal forum is

---

[2]In *Burford,* district court jurisdiction was invoked on grounds of diversity of citizenship and federal question review of a due process claim (319 U.S. at 317); in those jurisdictional statutes Congress had not, as here, made a determination of the need for a federal forum to enforce a particular statutory scheme or considered and rejected the argument that federal judicial proceedings would be an unwarranted intrusion on the states. *Fair Assessment,* as the court of appeals correctly understood (Pet. App. 14a-15a), required this Court to reconcile two "conflicting" and "divergent" lines of authority concerning 42 U.S.C. (Supp. V) 1983, on the one hand, and the Tax Injunction Act and principles of comity, on the other (454 U.S. at 101, 105); the Court found that Congress had not addressed or resolved the question and held that, in the absence of a congressional determination, principles of comity were there controlling.

to be available in suits by railroads under Section 11503. Nothing in *Alabama Public Service Comm'n* suggests that federal courts should not give effect to that congressional intent.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

FEBRUARY 1984

DOJ-1984-02